No. 07-28

Supreme Court, U.S.
FILED
AUG 08 2007
OFFICE OF THE CLERK

In The
Supreme Court of the United States

JOHN R. VINTILLA, authorized representative of Lucretia G. Vintilla, deceased,

Petitioner,

v.

SAFECO INSURANCE COMPANY, aka SAFECO INSURANCE COMPANY OF ILLINOIS,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

TIMOTHY J. FITZGERALD
Counsel of Record
MARK A. GREER
GALLAGHER SHARP
Bulkley Building, Sixth Floor
1501 Euclid Avenue
Cleveland, OH 44115-2108
(216) 241-5310

Counsel for Respondent

August 2007

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether Petitioner has presented compelling reasons to grant the Petition in order for this Court to review the Sixth Circuit's unpublished Opinion affirming the District Court's summary judgment in favor of Respondent in a lawsuit resulting from Respondent's settlement of a minor property damage insurance claim pursuant to the clear and unambiguous language of the insurance policy which expressly permitted Respondent to "settle or defend" any claim against an insured, as Respondent "consider[s] appropriate," where the Petition fails to establish that the Sixth Circuit's ruling is in conflict with a decision of another Court of Appeals or implicates an important federal question that has not been settled by this Court.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULES 29.6 AND 14.1(b)

Respondent Safeco Insurance Company of Illinois is a wholly-owned subsidiary of its parent corporation, Safeco Corporation, a publicly traded company. Safeco Corporation has no parent company, and no publicly held company owns 10% or more of its stock.

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BRIEF OF RESPONDENT IN OPPOSITION

INTRODUCTION

This case arises out of a $2,631.24 insurance settlement for property damage arising out of a minor two-car "fender-bender type" automobile accident that occurred in December 2000. It should be noted that this is the third time Petitioner has filed a petition with this Court seeking a writ of *certiorari* to the United States Court of Appeals for the Sixth Circuit from an appeal predicated upon some aspect or variation of the ensuing litigation from the underlying automobile accident and resulting traffic citation.[1] As with the first two petitions, Petitioner has again presented no "compelling reasons" for the Court to grant this Petition for a Writ of *Certiorari*. *See*, Sup. Ct. R. 10.

Specifically, Petitioner fails to demonstrate that the Sixth Circuit's March 2, 2007 unpublished per curiam Opinion is in conflict with the decision of another United States court of appeals on the same issue or that the Sixth Circuit decided an important federal question that is yet unsettled in this Court. *See*, Sup. Ct. R. 10(a) and 10(c). In fact, Petitioner has expressly acknowledged that "[t]he law governing the issue is well settled." (Pet. at 8). Nevertheless, Petitioner has failed to establish that the Sixth Circuit's Opinion was erroneously decided or misapplied an established rule of law, though *certiorari* is "rarely

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[1] *See, Vintilla v. City of Rocky River, et al.*, U.S. Sup. Crt. No. 03-1721; and *Vintilla v. United States District Court for the Northern District of Ohio*, U.S. Sup. Crt. No. 05-1246.

granted" even when such grounds have been demonstrated. *See*, Sup. Ct. R. 10.

Therefore, the Petition should be denied.

STATEMENT OF THE CASE

The motor vehicle collision that gives rise to this appeal occurred on December 10, 2000 in the City of Rocky River, Ohio, a suburb of Cleveland. It is undisputed that, at the time of the accident, Petitioner's decedent, Lucretia G. Vintilla ("Vintilla")[2] and the other driver involved were both traveling south on Wooster Road in Rocky River. As Vintilla was attempting to turn right to enter the parking lot of her church, the passenger side of her vehicle was struck by the front driver's side of the other vehicle.

Officer Richard Bird, a patrolman and, at the time, a nine-year veteran from the Rocky River Police Department, responded to the accident scene. (R. 13, Bird Aff. at ¶5). As part of his investigation, Officer Bird spoke with Vintilla and the other driver. Upon completion of his investigation, Officer Bird determined that Vintilla was responsible for causing the accident because she had failed to make the turn "as close as practicable to the right hand curb or edge of [the] roadway," a violation of Section 331.11(a) of the Traffic Code of Rocky River.[3] (R. 13, Bird

[2] Vintilla's death, which occurred while this case was pending before the Sixth Circuit, had nothing to do with the automobile accident at issue in this case.

[3] The pertinent part of the City of Rocky River traffic code reads, as follows:

(Continued on following page)

Aff. at ¶5). Officer Bird therefore caused a Summons in Lieu of Warrant to be issued to Vintilla ordering her to appear in Rocky River Municipal Court to answer to the charge of having violated Section 331.11(a). (R. 13, Bird Aff. at ¶5).

Respondent Safeco Insurance Company of Illinois ("Safeco"), which insured Vintilla on December 10, 2000, was put on notice of the accident and promptly began to investigate what had happened. As appropriate, the adjuster assigned to the claim interviewed both Vintilla and the other driver. (R. 13, Colbert-Gore Aff. at ¶1-2). Both persons stated that the collision occurred when Vintilla made a right hand turn in front of the other automobile. (R. 13, Colbert-Gore Aff. at ¶2). In addition to the statements of the two drivers, the physical evidence that Safeco obtained during its investigation (the front end, driver side damage to other vehicle and passenger side damage to Vintilla's automobile) was entirely consistent with the citation issued by Officer Bird, confirming that the accident was caused by Vintilla's negligent operation of her vehicle due to her failure to make a "right turn as close as practicable to the righthand curb or edge of the roadway" as required by Section 331.11(a) of the Traffic Code of Rocky River. (R. 13, Colbert-Gore Aff. at ¶2-4). Without doubt, there was no "rush[] to judgment" or "over

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> The driver of a vehicle intending to turn right into a private road or driveway, . . . from a public street or highway shall be governed by the following rule:
>
> (a) Approach for a right turn and a right turn shall be made as close as practicable to the righthand curb or edge of the roadway.

Rocky River, OH, Codified Ordinances, ch. 3, tit. 5, §331.11(a) (2005).

zealous (sic) and precipitous action" by Safeco to find Vintilla at fault for the automobile accident.

The automobile liability coverage section of Safeco's insurance policy with Vintilla provided that "We [Safeco] will pay damages for . . . property damage for which any insured becomes legally responsible because of an auto accident. We [Safeco] will settle or defend, *as we [Safeco] consider appropriate*, any claim or suit asking for these damages." (Emphasis added) (R. 13, Colbert-Gore Aff. at ¶1, 5). Accordingly, in January 2001, after completing its investigation, and even though no civil suit had been filed by the other driver against Vintilla, Safeco negotiated a settlement of the property damage claim for $2,631.24 (an amount within Safeco's policy limits) as permitted by the clear, unambiguous and express terms of its policy of insurance with Vintilla. (R. 13, Colbert-Gore Aff. at ¶5).

On the morning of the scheduled trial date in Rocky River Municipal Court, March 1, 2001, Officer Bird was in court with Vintilla, her counsel and the driver of the other vehicle. (R. 13, Bird Aff. at ¶7-8). Officer Bird recalls the court's traffic court docket that morning being full and the day unusually busy. (R. 13, Bird Aff. at ¶8). Upon being told by Vintilla's counsel – Petitioner in this appeal – that all damages from the accident had been fully paid, Officer Bird spoke to the prosecutor.[4] After verifying that

[4] Even though Officer Bird "was of the opinion that Mrs. Vintilla was absolutely the cause of the accident," the traffic court proceeding was dismissed because "her [Vintilla's] counsel represented that all damages to the other person involved in the accident had been paid and that the other person in the accident's vehicle had been repaired" and "the other person involved in the accident verified his satisfaction as to the repair of his property damage." (R. 13, Bird Aff. at ¶5).

Vintilla – by and through her insurance company, Safeco – had in fact satisfactorily compensated the other driver involved in the accident for all damages sustained, the traffic citation against Vintilla was dropped. (R. 13, Bird Aff. at ¶8).

Vintilla received a letter dated August 27, 2001, from Safeco advising her that her automobile insurance policy would not be renewed when it expired effective on October 1, 2001. In part, this underwriting decision was based upon the determination that Vintilla had been at-fault for the accident of December 10, 2001. The August 27, 2001 letter also stated that an additional reason for the non-renewal decision was a backing accident that Vintilla was involved in back on January 2, 2000, eleven months before the December 10, 2000 accident at issue in this case. (Pet. App. at 3a, Opinion and Order at pg. 3, fn. 3). Vintilla protested Safeco's non-renewal of her policy which led Safeco to reconsider and issue a substitute policy.

Thereafter, Vintilla filed this lawsuit against Safeco on March 3, 2005.[5] Following some procedural maneuvering

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[5] Vintilla's lawsuit against Safeco followed her unsuccessful efforts to sue Officer Bird and the City of Rocky River. In the United States District Court for the Northern District of Ohio, Vintilla alleged that Officer Bird and the City had violated her constitutional right to due process by "arbitrarily usurp[ing] the function of a judicial tribunal and improperly pronounc[ing] the plaintiff 'at fault' for the accident." (Pet. App. 3a, Opinion and Order at pg. 3). In *Vintilla v. City of Rocky River*, the District Court determined that the fact "[t]hat Officer Bird disagreed with [Vintilla's] assessment of who caused the accident does not render his investigation, the issuance of a citation to her or the criminal proceeding that was dismissed, a violation of due process." (Pet. App. 3a, Opinion and Order at pg. 3). That judgment was appealed to the Sixth Circuit which affirmed the District Court on March 3, 2004. *See*, *Vintilla v. City of Rocky River*, 96 Fed.Appx. 274, 2004 U.S. App.LEXIS

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by Petitioner,[6] the District Court granted Safeco's Motion for Summary Judgment, thereby disposing of all claims made in the Complaint. As established in the District Court, the undisputed facts and evidence lead to one – and only one – conclusion: Safeco did not breach the contractual provisions of the insurance policy issued to Vintilla. Safeco had reasonable and good faith justification to settle the property damage claim of the other driver. Because Safeco did not make an arbitrary determination that Vintilla was at fault for the December 10, 2000 accident, settlement of the property damage claim was in compliance with and not in violation of the provisions in the insurance policy which Safeco had with Vintilla.

Thus, Safeco was entitled to summary judgment in its favor as no genuine issues as to any material facts were found and, as the District Court properly determined, Safeco was and is entitled to judgment as a matter of law. (Pet. App. at 3a). Based upon the District Court's "thorough and well-reasoned decision," that judgment was

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4304 (6th Cir.), *cert. denied*, 543 U.S. 821, 125 S.Ct. 61, 160 L.Ed.2d 31 (2004). Having been unsuccessful in her initial lawsuit against Officer Bird and the City of Rocky River, Vintilla shifted her focus to her insurer, Safeco.

[6] After a Status Conference was conducted on June 17, 2005, the District Court ordered that new lead counsel enter an appearance for Vintilla. In response, Petitioner, who was Vintilla's trial counsel in the District Court, filed motions to disqualify the District Court judge and to vacate the order for new lead counsel. After the District Court denied both motions, Petitioner filed a Petition for Writ of Mandamus with the Sixth Circuit to compel the District Court judge's disqualification from hearing the case. When the Petition for Writ of Mandamus was denied by the Sixth Circuit, a Petition for Writ of *Certiorari* was filed with this Court which was denied on May 30, 2006. *See*, *Vintilla v. United States District Court for the Northern District of Ohio*, 126 S.Ct. 2347, 164 L.Ed.2d 840 (2006).

appropriately affirmed by the Sixth Circuit. (Pet. App. at 1a).

REASONS FOR DENYING THE PETITION

The Petition satisfies none of the criteria for a grant of *certiorari*. Petitioner has pointed to no genuine conflict with any decision of another court of appeals or this Court's precedent. Instead, Petitioner accuses the Sixth Circuit of having "failed and/or refused to decide important federal questions submitted to it," and that doing so was "in disregard of the relevant and established decisions of this Court." (Pet. at 3). Yet, there is no indication that the Sixth Circuit failed to consider the "federal questions" presented to it in this appeal merely because it did not issue a lengthy opinion. *Taylor v. McKeithen*, 407 U.S. 191, 194, 92 S.Ct. 1980, 32 L.Ed.2d 648 (1972) (recognizing that "the courts of appeals should have wide latitude in their decisions of whether or how to write opinions.")

Based upon a considered assessment of the record and the arguments made by Petitioner as counsel for Vintilla, all indications are that the Sixth Circuit fully considered and decided the issues raised in this appeal, first at the merit stage, (Pet App. at 1a), and then upon Petitioner's request for panel rehearing pursuant to Fed. R. App. P. 40, (Pet. App. at 2a). Moreover, there is no citation anywhere in the Petition to any decision from this Court that was disregarded by the Sixth Circuit.

A decision in this case would be of little, if any, practical significance to the development of federal law. A ruling by this Court would affect only the interests of the parties in this case as the Petitioner himself recognizes that the

"fundamental controversy" is a private contract dispute between Petitioner and Respondent. (Pet. at 6). Petitioner acknowledges that the language of Safeco's insurance policy is clear and unambiguous. (Pet. at 5). What Petitioner is really seeking is to have this Court rewrite that language in contravention of established precedent of the Supreme Court of Ohio. *Marginian v. Allstate Ins. Co.*, 18 Ohio St.3d 345, 481 N.E.2d 600 (1985).

In *Marginian*, as here, the plaintiff instructed his insurance company not to pay any claims for damages arising out of two separate collisions, and then sued his insurance company when they paid damage claims of the other drivers involved in the accidents. Id. at 345-46. Plaintiff in *Marginian* alleged he had been harmed by the insurance company's settlement in that he would be subject to increased premiums on "the subject insurance policy, or any other similar policy he may procure." Id. The Ohio Supreme Court held that, despite the resultant increase in premium, the insurance company's right to settle was not contingent upon its insured's approval. Id. at 348. This is the very same argument Petitioner makes here.

Implicit in the *Marginian* court's holding is a declaration that no cause of action will lie against an insurer where the insurer, as it deems appropriate, has either settled the claim or defended an action brought against its insured. Indeed, within its opinion, the *Marginian* court states that "we find that there can be no set of circumstances under which relief could be granted." Id. at 347.

An insurer, like Safeco, acts entirely in good faith in settling a property damage claim despite not having secured the insured's consent to the settlement. Before

settling such a claim, there is no need for there to have been agreement of its insured[7] or a judicial determination made that the insured is legally responsible for the accident where the policy of insurance provides that the insurer "will settle or defend, as [the insurer] consider[s] appropriate, any claim or suit asking for [property] damages." When the facts establish that the insurer investigated the accident, interviewed the insured and driver of the other vehicle which investigation revealed that the insured was cited by the investigating police officer and there was physical evidence establishing that the insured violated a municipal traffic law governing the conduct of the insured leading to the reasonable conclusion that the insured was legally responsible for causing the accident, the insurer may settle the property damage claim without breaching the insurance policy or engaging in bad faith even though the insured protests his or her innocence in causing the accident.

There is no substantive or procedural due process violation when an insurer settles a property damage claim made against an insured pursuant to a private insurance policy in the complete absence of any governmental or state action either interfering with or impairing the rights of the parties in the insurance contract. As the District Court cogently recognized, a clause of an insurance policy designed to encourage the out-of-court settlement of property damage claims arising from automobile accidents

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[7] There is no provision in the Safeco policy requiring Vintilla's consent to a settlement of a claim to which the policy applied. Even so, Vintilla's reliance upon Safeco's resolution of the property damage claim to secure a dismissal of the traffic violation citation in Rocky River Municipal Court was an express ratification of the settlement that had been worked out between Safeco and the owner of the other vehicle.

is not against the public policy of the State of Ohio. (Pet. App. at 3a, Opinion and Order at pg. 10-11). Nor would any other state ever impose such an undue and unworkable burden on insurers as that sought by Petitioner. To do so would make it virtually impossible for insurers to settle any claim covered by insurance upon objection by an insured. Minor property damage claims, like the one here, could not be resolved without a full blown judicial determination of fault.

Settlements are intended to conserve judicial resources and provide for more prompt resolution of private disputes. *See*, 15A Am.Jur. 2d, *Compromise and Settlement*, §§5-6, at 729-731. Recognition of the arguments made by Petitioner here would result in severe backlog of cases, bringing the already overcrowded dockets of state and federal courts to a screeching halt. For these and any number of additional reasons, a decision adopting the legal theories espoused by Petitioner would have disastrous effects. It would be a waste of private and judicial resources to impose the burdens sought by Petitioner before an insurer could settle a case in this context.

Finally, and quite apart from the Petition's failure to satisfy the criteria of Rule 10, review is also unwarranted because this case is an exceptionally poor vehicle to resolve any question presented. Despite the recent enactment of Fed. R. App. P. 32.1(a), it has not been the ordinary practice of this Court to grant *certiorari* when a decision sought to be reviewed is unpublished, and there is no compelling reason to do otherwise here. There is no cause for this Court to expend its limited resources in resolving an appeal of this nature.

The decision below faithfully applied relevant precedent, and Petitioner, at best, merely asks the Court to examine whether the District Court and Sixth Circuit correctly applied settled law. Petitioner may quarrel with how the courts applied the law to the facts of the case, but that is not the sort of "error" worthy of a grant of *certiorari*. Sup. Ct. R. 10. There is no reason why this Court should review a fact-specific ruling that in no way conflicts with the decisions of this Court or other courts of appeals.

CONCLUSION

Petitioner has not established any compelling reason for this Court to grant the Petition. Wherefore, the Petition for a Writ of *Certiorari* should be denied.

Respectfully submitted,

TIMOTHY J. FITZGERALD
Counsel of Record
MARK A. GREER
GALLAGHER SHARP
Bulkley Building – Sixth Floor
1501 Euclid Avenue
Cleveland, OH 44115-2108
(216) 241-5310

Counsel for Respondent

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